

## **NOTICE OF DECISION - FINDINGS INTERIM WATERSHED MITIGATION ADDENDUM - 2001**

The findings are made pursuant to Section 21080.5 of the Public Resource Code (PRC), and Sections 1144-1145 of Title 14 California Code of Regulations (14 CCR). These findings pertain to the amendment of 14 CCR Sections 895 and 895.1, and the adoption of 14 CCR Sections 916.13, 916.13.1, 916.13.2, 916.13.3, 916.13.3, 916.13.4, 916.13.5, 916.13.6, 916.13.7, 916.13.8.

### **I. DESCRIPTION OF REGULATORY ACTION:**

The Z'berg – Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the State's interest in the use, restoration, and protection of the forest resources. The Legislature further recognizes that these forest resources provide watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is intended to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code Section 4551 gives the Board of Forestry and Fire Protection (Board) the authority to adopt such rules and regulations necessary to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In previous rule making actions (Protection for Threatened and Impaired Waters-1999; Watershed Protection Extension -2000, 2001, and 2002), the Board adopted numerous prescriptive regulations for the protection of watercourses designated as having impaired water quality values. The Board defined what constituted Impairment. Rule language, adopted by the Board, to extend these prescriptive regulations to December 31, 2003 is being submitted to OAL for their approval. The Board has developed pilot rules [Interim Watershed Mitigation Addendum – 2001(IWMA)] for a one-year, optional demonstration period to allow landowners to choose to move from a project-by-project analysis of impacts and mitigation development to a watershed level approach. These rules are to apply statewide. They are a test of watershed level analysis targeted at the maintenance and restoration of anadromous salmonids. They also provide a test of watershed or site specific rules. The regulatory action being taken identifies the limiting factors for the resource to be protected (water quality/salmonids), and then mandates that those limiting factors be either avoided or that all feasible alternatives be utilized in the design of proposed timber operations. The watershed or site specific rules may provide greater protection for the resource than the prescriptive rules. The effectiveness of prescriptive rules that set limits or specific tasks is determined by the highly variable nature of on-site conditions. Designing specific actions to address the limiting factors identified by resource professionals may have a higher probability of providing effective resource protection. In any case, it is the intent of the Board that these pilot rules results in equal to or better environmental protection than the level provided by the existing prescriptive standards. Further, this proposal is consistent with the stated intent of the Administrative

Procedures Act (Gov. Code § 1340.1(a)) by utilizing performance rather than prescriptive regulatory standards.

Several species of anadromous salmonids (chinook and coho salmon, and steelhead ) have been listed throughout their range in California under either the federal or California Endangered Species Act since December 1995. Since the listings, the Board has adopted several rule packages that provide generic protective measures for anadromous salmonids across their entire range.

The Board recognizes that it is beneficial for both anadromous salmonids and timberland owners to focus on site-specific factors that affect freshwater habitat for anadromous salmonids. Furthermore, the Board recognizes the need to address these factors in a broader context than that of individual harvest plans.

- The IWMA rule package provides a regulatory process that allows the Department of Forestry and Fire Protection (Department), other responsible agencies, and timberland owners to identify site-specific conditions that are impacting anadromous salmonids within the broader context of a watershed.
- The IWMA rule package promotes consultation between the responsible agencies, and the timberland owner to address specific limiting factors for anadromous salmonids within the evaluation area prior to the development and review of individual harvest plan proposals.
- The IWMA rule package provides timberland owners with an option to the existing generic forest practice rules. The IWMA proposal changes this focus from prescriptive standards to consideration of harvest plan and mitigation design on site-specific factors that limit anadromous salmonids within the evaluation area.
- The IWMA rule package provides an opportunity for the Department, other responsible agencies, and timberland owners to conduct a pilot test on the feasibility of a voluntary approach to watershed evaluation.

## **II. FINDINGS REGARDING POTENTIAL SIGNIFICANT IMPACTS**

The Board finds that adoption of the IWMA rule proposal will not result in significant environmental impacts. The forest practice rules and these rule amendments or adoptions are designed to identify impacts and to avoid or reduce them to a level of less than significant (14 CCR §§ 896, 897, 898, 898.1, and 898.2).

The Board considered that this regulatory proposal had a key objective of maintaining and restoring anadromous salmonids and the beneficial uses of water as set forth in the California Porter-Cologne Water Quality Act. To that end the Board included in this proposal the definition of “limiting factors”. Those factors include but are not limited to

water quality, water quantity, sedimentation, water temperature, large woody debris, and nutrient balance (eutrafication).

The IWMA rule proposal provides equal or better environmental protection compared to the existing prescriptive rules based on the following: 1) watershed evaluation rules are further clarified, 2) pre-consultation (14 CCR §§ 15060-15060.5) is formally introduced into the Timber Harvesting Plan (THP) process, 3) alternatives will be considered in light of site specific conditions which are limiting to salmonids, 4) timber operating practices will be designed to provide the on the ground protection necessary for salmonid protection given identified limiting factors, and 5) the development of specific operating practices will utilize a multi-disciplinary qualitative analysis.

Pre-consultation, and resulting design and mitigation improvement, are accomplished in the development of the THP, before it is introduced into the formal Forest Practice Act THP Review Process (PRC § 4582.7). As such the preconsultation with responsible agencies considers the breadth of practices, alternatives and project design that will reduce impacts of limiting factors on salmonids. This is done at the levels of direct effects, indirect effects, and cumulative effects for all reasonable foreseeable projects in the IWMA evaluation area.

The pre-consultation and IWMA development provided by these rules take place before a THP is prepared. This process continues to satisfy both the spirit and requirements of the California Environmental Quality Act (CEQA) in identifying potential adverse environmental effects and development of all feasible mitigations to reduce these effects to a level of insignificance. To that end, these rules provide state and local government entities, as responsible agencies, the opportunity to participate in a project (THP) design. This process will best achieve the project objective of a voluntary watershed assessment, and the level of disclosure and analysis mandated by CEQA. Pre-consultation provides the opportunity for all parties to address how a project can best meet the objective of the proponent while at least minimizing impacts, and perhaps improving the quality or quantity of one or more natural resources.

The IWMA is submitted as an addendum to a THP. As a part of the THP, it is reviewed under the CEQA functional equivalent process (PRC § 21080.5 and 14 CCR §§ 15250-15253, 1037-1037.10). The THP process has been certified as meeting the standards of PRC Section 21080.5 by Secretary of the Resources Agency in January 1976. The Board further finds that the IWMA rules adopted with action do not constitute cause for the current Resources Secretary to request review of that certification under PRC Section 21080.5(f). The IWMA rules as adopted do not alter either the THP review process (14 CCR §§ 1037-1037.11), or the Board certified rulemaking procedures that were certified in 1979 by the Resources Secretary (14 CCR §§ 1142-1145; last amended November 1996).

Where potential significant adverse impacts, either cumulative or individual, are identified as the rules of the Board are applied, identification of all mitigation, alternatives, or practices that are feasible and would lessen or avoid those impacts is

required (14 CCR §§ 896-898.2). The rules of the Board then require that, where impacts remain after implementing all feasible mitigation, those mitigations considered not feasible be disclosed. The rules of the Board also require that where any significant impacts remain, the Director consider either 1) referring an issue to the Board under PRC Section 4555 for emergency rulemaking, or 2) determine that the benefits of the project outweigh any significant, unavoidable, adverse environmental impacts.

### **III. FINDINGS ON ALTERNATIVES**

The Board has considered the following three alternatives:

#### **A. Retain existing regulations without any change.**

1. Brief Description - Information submitted for the review of a THP for compliance with the rules of the Board would continue primarily on the information developed on a project-by-project basis. The exception to this would be the cumulative effects analysis of the proposed THP.
2. Findings - The Board rejected this alternative, as it would not address the public problem and other conditions or circumstances the proposed regulatory action was intended to address as specified in the *Initial Statement of Reasons*. The analysis of the potential impacts of timber operations on anadromous salmonids would remain at a project level without watershed level planning considerations.

In previous rule making actions, the Board adopted interim watershed protection rules for the protection of waters designated as having impaired water quality values. The Board defined impairment. These Interim Watershed Protection Rules have been extended to December 31, 2003. IWMA rules are intended to move from a project-by-project analysis of impacts and mitigation development to a watershed level approach. The Board has developed these pilot rules to continue towards the provision of watershed level evaluation. These rules are to apply statewide. They are an initial pilot test of watershed level evaluation, targeted at the maintenance and restoration of anadromous salmonids.

Several species of anadromous salmonids (Chinook and Coho salmon and steelhead trout) have been listed throughout their range in California under either the federal or California Endangered Species Acts since December 1995. Since the listings, the Board has adopted several rule packages that provide generic protective measures for anadromous salmonids across their entire range.

The Board recognizes that it is beneficial for both anadromous salmonids and timberland owners to focus on site-specific factors that affect freshwater habitat for anadromous salmonids. Furthermore, the Board recognizes that it maybe desirable to address these factors in a broader context than individual harvest plans.

#### **B. Adopt the regulations as proposed in the 15-Day Notice with**

**consideration given to public and other agency comments.**

1. Brief Description – The IWMA rules will provide the opportunity for the Lead and Responsible Agencies to develop information on a watershed level basis before a THP is designed. This information provides the opportunity to design timber operations to fit the site-specific conditions for that watershed. This method of design will provide equal to or better environmental protection than the existing prescriptive standards. The design is to incorporate any necessary practices to address limiting factors on salmonids. These practices are to be supported by information showing their effectiveness in addressing limiting factors to salmonids. Further there is compliance monitoring to assure the designed practices are implemented.
2. Findings - The adoption of this alternative would allow the Board to adopt modified rules after receiving input on this proposal. Alternative B. was determined to be the preferred alternative by the Board, and is being adopted. The Board finds that there will be no adverse environmental effects from the proposed action because the IWMA is not a discretionary document on its own, but an informational document. Timber operations must be approved by the Director utilizing the Timber Harvesting Plan review process (14 CCR §§ 1037 – 1037.11), and the guidance to the Director for review standards (14 CCR §§ 898-898.2). The potential for significant adverse impacts are evaluated against the THP criteria established by the Board in its rules. The IWMA has no regulatory effect until it is submitted as part of a THP and reviewed and finalized under the THP review process. Upon approval of the THP by the Director, the IWMA is part of THP and as such enforceable.

Further, the Board finds that the IWMA is consistent with the efforts of the National Marine Fisheries Service (NMFS) to protect Coho Salmon, which are listed as Threatened for the North Coast of California under the federal Endangered Species Act. NMFS states in its “ Analysis of Extinction Risk by ESU” that: “The status of Coho salmon stocks in most small coastal tributaries is not well known, but these populations are small. There was unanimous agreement among the BRT that Coho salmon in this ESU are not in danger of extinction but are likely to become endangered in the foreseeable future if trends continue” (<http://www.nwfsc.noaa.gov/pubs/tm/tm24/analysis.htm#cc>). The Board has found that this regulatory proposal is consistent with the need to change that trend and contributes to the maintenance and restoration of the Coho population for the Northern California Coast.

The Board determines that the action of designing a THP (alternatives and mitigations) with knowledge of the limiting factors for a specific watershed will provide salmonids equal to or better protection than the existing prescriptive rules for threatened and impaired watersheds.

- C. Retain existing regulations without any change and pursue a Pilot IWMA in a non-regulatory format.**

1. Brief Description - The proposal would proceed without regulations to implement the concept of the IWMA on a voluntary, non-regulatory basis. The Department and landowners would informally consult with the review team agencies as described in the IWMA rules and provide that information as part of a THP when submitted. The Board determined that there would not be standards for that information, or guidance to the review team agencies on how to perform watershed evaluation. Further, responsible agencies would not be encouraged to provide their expertise to the THP preparer in the design phase of the project. It is this phase where natural resource protection measures are most effectively and efficiently made part of a project.
2. Findings – The Board determined to reject this proposal. It would not provide as effective an option to develop and implement site-specific performance standards for the protection of listed salmonids. The site-specific standards would be utilized in place of the prescriptive standards contained in 14 CCR §§ 916.9 and 923.9. The Interim Rules do not bar the use of a General Alternative (14 CCR § 898(e)), but the standards for acceptance of such an alternative are not as clear as that set forth in the IWMA rules (14 CCR § 916.13.5). Project proponents have historically been reticent to request general alternatives to the Board rules during the approval process or the life of a THP.

#### **IV. SUMMARY OF POTENTIAL IMPACTS AND FINDINGS**

The Board has not identified any direct, indirect, or cumulative adverse environmental impacts that may result from the proposed action. The purpose of the IWMA is to provide the Director of the Department additional information in reaching a discretionary decision as provided for in 14 CCR §§ 898.1 or 898.2. In either event, the addendum does not have the potential to create any impact on its own merits. Any physical actions, such as timber harvesting can only occur under an approved Timber Harvesting Plan (14 CCR §§ 1037 - 1037.11).

The Board considered that this regulatory proposal had a key objective of maintaining and restoring anadromous salmonids and the beneficial uses of water as set forth in the California Porter-Cologne Water Quality Act. To that end, the Board included in this proposal the definition of “limiting factors”. This definition states the areas where potential significant impacts may occur to the resources targeted for protection. Those factors include, but are not limited to, water quality, water quantity, sedimentation, water temperature, large woody debris, and nutrient balance (eutrafication). This determination is consistent with the “Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat, June 1999”, which spoke to watershed level analysis with site specific designed protective measures for salmonids.

The Board finds that there will be no direct, indirect, or cumulative adverse environmental effects from the proposed action because the IWMA is not a discretionary document on its own, but an informational document that becomes part of an approved

THP. Timber operations must be approved by the Director utilizing the Timber Harvesting Plan review process (14 CCR §§1037 – 1037.11). The IWMA is evaluated when it is submitted as part of a plan. The Director may only approve THPs that meet the standards of 14 CCR 896-898.2.

## **V. FINDINGS ON COSTS**

The Board finds there are no additional costs to any state agency, any state mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Div. 4, Section 17500 Government Code because of any duties, obligations or responsibilities imposed on state or local or agencies or school districts. Individuals implementing the proposed voluntary action will incur additional costs. However, it is equally likely that those costs will be offset by reductions in overall THP preparation costs and result in no net significant additional cost resulting from this action when viewed in the context of total THP preparation costs over time. This finding, and those itemized in subparagraphs A through G, are based on the following “Discussion”.

Discussion: The Board staff determined that this regulation would not have any significant adverse economic impact on any businesses. Businesses must already comply with applicable provisions of state law. This addition to the regulations is utilized at the landowner’s option. Since the majority of expenses already exist under Board regulation, the Board has determined that the potential cost for this regulation would be a small marginal cost increase. Therefore, the proposed regulations would not have a significant adverse economic impact on any business. If a landowner elects to prepare an IWMA, there would be a marginal cost over and above that for the Cumulative Impact Analysis. However, a landowner’s use of the IWMA is voluntary. Accordingly the landowner would weigh the costs and benefits to utilization of the IWMA. The following is a discussion of the marginal cost increase that can be voluntarily assumed by a timberland owner if they see an overall value or advantage to be gained.

The cost of implementing mitigation is also difficult to assess. It is possible that a watershed evaluation could define operational practices, which would result in cost savings over prescriptive practices required under existing rules. It may also result in requiring operational practices with a greater cost than that required under existing rules. Regardless, since the mitigation measures set forth under these rules are site specific, it is therefore impossible to accurately estimate costs.

The IWMA rule package proposal is a focused limiting factor mitigation addendum designed to address protective measures for listed anadromous salmonids in association with forestry operations. While the proposed process extends the evaluation area beyond what is required for a THP under the current Forest Practice Rules (FRS), it is not a watershed assessment.

In preparing the following economic analysis, the Board staff contacted several industrial landowners to ascertain the potential costs and benefits associated with the IWMA proposal. The IWMA rule package proposal does not create any additional mandatory

FPRs. It provides a timberland owner with an optional approach that focuses on site-specific conditions and mitigation measures. Since the IWMA process is not mandatory, it is anticipated that landowners will initially assess whether there are economic or management benefits associated with an IWMA analysis before initiating the process and engaging the agencies in consultation.

Preliminary economic analysis indicates that a landowner choosing to undertake an IWMA analysis will likely incur additional costs. The IWMA process covers a larger geographical area than the normal THP. The landowner will initially have to gather and analyze more data and information. The IWMA process may require more on the ground analysis than what is required under the current FPRs and the timber harvest planning and approval process. Furthermore, a landowner incurs more risk initially. The IWMA analysis is not a permit and does not provide a submitter any rights. It is not reviewed and approved by the Department independently, but is submitted as an addendum to a proposed THP. Additional factors that will affect the costs associated with an IWMA analysis include size of the evaluation area, percent of the evaluation area owned by the party submitting the IWMA, amount of existing data, how much additional data is required by the consulting agencies, access to information from adjacent landowners, and amount and proximity of watercourses within the evaluation area.

Costs may be offset by the benefits derived from the initial consultation with the responsible agencies before initiation of the THP process. The landowner may also derive some regulatory relief from the existing *Protections for Threatened and Impaired Watersheds, 2002 rule package* by proposing more efficient mitigation measures for anadromous salmonids within the evaluation area. IWMA analyses that cover large areas may provide the landowner a benefit in terms of economy of scale. The landowner may be able to incorporate the IWMA analysis in more than one timber harvest project, thus allowing the landowner to amortize costs over several projects. Finally, the information gathered during the IWMA process may be beneficial to the landowner during the THP review and approval process.

Based on the information provided by the landowners, the estimated costs to complete an IWMA analysis range from \$1.75 per acre to \$11.50 per acre. Key factors include how much information and analysis is required by the consulting agencies, size of the evaluation area and economy of scale, as well as whether costs could be amortized over more than one THP within the evaluation area.

This action does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

#### A. Costs to State Agencies

The Board has determined that this action will not have a net increase in costs to state agencies that have been identified. The proposal will only be effective for one year; and the work described in the regulatory proposal is part of the current THP process. Other



Review Team Agencies currently provide consultation to RPFs for the preparation of plans on a time available basis.

#### B. Local Agencies

The Board has determined that this action will not have a net increase in costs to local government, school districts or other local agencies.

#### C. Costs to Affected Persons

The Board has determined that this action will not have a net increase in costs to affected persons that have been identified.

#### D. Costs to Businesses and Small Businesses

The Board has determined that this action will not have a mandatory net increase in costs to businesses and small businesses that have been identified.

#### E. Competitiveness Considerations

The Board has determined that this action will not have a significant impact on the ability of California businesses to compete with businesses in other states.

#### F. Creation or Elimination of Jobs or Businesses

Adoption of these regulations is not likely to create or eliminate jobs within California.

#### G. Impacts on Housing

The Board has determined that this action will not have a significant affect housing costs.